



RECORDATION NO. 1 5391
FEB 1988

LEASE CONSULTANTS CORPORATION DEC 2 1987 - 8 22 AM

November 30, 1987

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Room 2303
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

12-2-87
Date
Fee \$ 10.00
ICC Washington, D. C.

Dear Ms. Lee:

Please file our Lease Document Number 16524. I have enclosed the following:

- Item 1 Original Lease Document
- Item 2 Notarized copy of Lease document
- Item 3 Filing Fee Check in the amount of \$ 10.00.

PARTICIPATING PARTIES

SELLER: Wilson Railway Corporation
901 Thomas Beck Road
P.O. Box 697
Des Moines, Iowa 50315

LESSEE: Western Rail Road Company
Wald Road
P.O. Box 311475
New Braunfels, Texas 78131-1475

LESSOR: Lease Consultants Corporation
2520 Harding Road, Suite 5
P.O. Box 4972
Des Moines, Iowa 50306

DESCRIPTION OF LEASED EQUIPMENT

One EMD Locomotive, 20 Ton, 1200 HP, Unit # 9617, SW-1200,
S.N. 57-D-156.

Thank you for your prompt assistance.

Best Regards,

Steve Brooks

Steve Brooks
President

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Steve Brooks
P. O. box 4972
Des Moines, IA 50306

Dear
Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12-2-87 at 8:30AM, and assigned recordation number(s).
15391

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)



LEASE CONSULTANTS CORPORATION

Box 4972 • Des Moines, Iowa 50306

EQUIPMENT LEASE

RECORDATION NO. 1 5391

DEC 2 1987 - 8 AM

Lease No. 15158
Date of Delivery
To Lessee

LESSEE

(A) Name Western Rail Road Company

SUPPLIER

(B) INTERSTATE COMMERCE COMMISSION
Wilson Railway

Address P.O. Box 311475

Address 901 Thomas Beck Road

City New Braunfels

City Des Moines

State Texas Zip 78131-1475

State Iowa Zip 50303-0697

(C) SCHEDULE OF EQUIPMENT LEASED

QUANTITY, DESCRIPTION, MODEL NO., SERIAL NO., OR OTHER IDENTIFICATION

EMD Locomotive, 20 Ton, 1200 HP, Unit #9617, SW-1200

S.N. 57-D-156

(D) Equipment Location if other than Lessee's Address

Address

City

State

Zip

SCHEDULE OF RENTAL PAYMENTS

SECURITY DEPOSIT

TERM OF LEASE (In Months)

TOTAL NUMBER OF RENTAL PAYMENTS

AMOUNT OF EACH PAYMENT

36

36

Rent \$ 1251.00

Tax \$

Total \$

\$ NONE Received

Refundable upon expiration of the Lease, provided all Lease terms and conditions have been properly fulfilled by Lessee

TERMS AND CONDITIONS—PLEASE READ CAREFULLY BEFORE SIGNING

- ENTIRE AGREEMENT:** This Lease, which includes the provisions on the reverse side hereof and any other schedule made a part hereof by the parties, constitutes the entire agreement between Lessor and Lessee.
- LEASE:** Lessee hereby leases from Lease Consultants Corporation an Iowa corporation ("Lessor"), and Lessor leases to Lessee, the personal property described in the Schedule of Equipment Leased above and in any other schedule made a part hereof by the parties (hereinafter called "Equipment").
- RENT:** Lessee agrees to pay during the term of this Lease aggregate rent equal to the total number of rental payments specified above, multiplied by the amount of each payment specified above including taxes. The tax portion of the payment may be adjusted during the life of this contract to reflect any changes in the applicable sales tax rate. The Security Deposit specified above is payable at the time of the signing of this Lease. The due date of the initial rental payment is the date upon which the equipment is delivered to Lessee, or any later date selected by Lessor. The remaining rental payments shall be due at equal periodic intervals over the term of the Lease. Rental payments shall be due on a like date of each successive payment period or in accordance with any other schedule made a part hereof by the parties. All rent shall be paid to Lessor at the address set forth above, or as otherwise directed by Lessor. A late charge of 5% of the payment amount or \$5.00, whichever is greater, shall be applied to each payment not made within 10 days of the due date.
- TERMS OF LEASE; RENEWAL TERM:** THIS LEASE IS IRREVOCABLE UNTIL TERMINATED AS PROVIDED HEREIN and Lessee's obligations hereunder shall not abate by reason of Lessor's taking of possession of the equipment or for any other reason. The initial term of this lease shall begin upon the date of delivery of the equipment to Lessee and shall continue for the number of months specified above (term of lease) following delivery of the equipment to Lessee. The Lease shall automatically renew for an additional payment period at the expiration of the initial term and at the expiration of any renewal term thereafter, at the rental rate specified above, payable in advance, unless Lessor or Lessee shall notify the other as provided in paragraph 19 of this Lease of its intent not to renew this Lease, which notice shall be given at least thirty (30) days prior to the expiration of the term or the renewal term. All of the terms and conditions of this lease remain in full force and effect until this Lease is terminated as provided herein.
- WARRANTIES:** Lessor authorizes Lessee to enforce in its own name all warranties, agreements or representations, if any, which may be made by the supplier to Lessee or Lessor, but Lessor itself makes no express or implied warranties as to any matter whatsoever, including, without limitation, the design or condition of the equipment, its merchantability or its fitness for any particular purpose, its quality, capacity or workmanship, patent infringements or latent defects, or compliance of the equipment with the requirements of any law, regulation, specification or contract relating thereto. Lessee understands and agrees that neither the supplier nor any salesman or other agent of the supplier is an agent of Lessor. No salesman or agent of the supplier is authorized to waive or alter any term or condition of this Lease, and no representation as to the equipment or any other matter by the supplier, shall relieve Lessee of the obligation to pay rent or any other obligation under this Lease.

SEE REVERSE SIDE FOR ADDITIONAL TERMS & CONDITIONS

(F) Accepted by Lessor on this day

Dated this day

of 19

of 19

AT DES MOINES, IOWA

THIS LEASE IS NOT BINDING UNTIL ACCEPTED BY LESSOR
LEASE CONSULTANTS CORPORATION

Western Rail Road Company

CORRECT LEGAL NAME OF LESSEE

By X [Signature] PRESIDENT

TITLE

By

By X

TITLE

(G) AGREEMENT OF UNCONDITIONAL GUARANTY

This guaranty agreement is executed for the benefit of Lease Consultants Corporation, its successors and assigns, to induce Lease Consultants Corporation to enter into the above Lease with the above named Lessee.

The undersigned guarantors jointly and severally unconditionally guarantee the full performance by Lessee of the above Lease, including without limitation the prompt payment when due of each monthly rental payment due and payable under such Lease. The undersigned guarantors agree to pay all costs and expenses, including attorneys' fees, incurred by Lessor in enforcing the foregoing Lease and this guaranty agreement. To enforce the liability of guarantors under this guaranty agreement, Lessor shall not be required first (a) to give guarantors notice of Lessee's default, (b) to repossess the equipment, or (c) to accept late payments of rental.

The term of the foregoing Lease may be extended and the Lease may be amended from time to time without notice to guarantors and without defeating or diminishing this continuing guaranty agreement, which shall continue in full force and effect with respect to the Lease as extended or amended.

This guaranty agreement shall be governed by and construed in accordance with the laws of the State of Iowa. Guarantors hereby consent and submit to the jurisdiction of the respective courts of the County of Polk of the State of Iowa for purposes of enforcement of this guaranty agreement.

X, Individually

X, Individually

X, Individually

X, Individually

William R. Parker, JR.

(H) CERTIFICATE OF ACKNOWLEDGEMENT & ACCEPTANCE OF LEASED EQUIPMENT-LEASE No. 15158

TO: LEASE CONSULTANTS CORP.
P.O. Box 4972
Des Moines, IA 50306

We hereby acknowledge that on the date indicated below we received delivery of all the equipment described in the Lease numbered above. The equipment is accepted by us as the equipment described in the Lease and is satisfactory in all respects for the purposes of said Lease.

Western Rail Road Company

CORRECT LEGAL NAME OF LESSEE

By X [Signature] Supt. Shops & Cars

TITLE

DATE OF DELIVERY

ORIGINAL

6. **JURISDICTION:** This Lease regardless of situs of signature, shall be deemed to be executed in Polk County Iowa, and shall be governed by and construed in accordance with the laws of Iowa. Lessee hereby consents and submits to the jurisdiction of the respective courts of Polk County Iowa for the purposes of enforcement of this Lease.
7. **EQUIPMENT DELIVERY:** Lessee has requested equipment of the type and quantity specified herein and has selected the supplier named herein. Lessor agrees to order such equipment from said supplier, but shall have no liability to Lessee, to the supplier or to any other person, for transportation, delivery or installation of the equipment or for the failure by the supplier to fill the purchase order or meet the conditions thereof. Lessee hereby authorizes Lessor to add to this Lease the serial number of each item of equipment so delivered. Lessee agrees that if the equipment is not properly installed, does not operate as represented or warranted by the supplier, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against supplier and shall nevertheless, continue to pay Lessor all rent payable under this Lease.
8. **LOCATION:** The equipment shall be delivered and thereafter kept, maintained and located at the location specified herein and shall not be removed therefrom without Lessor's written consent.
9. **OWNERSHIP OF EQUIPMENT:** Title to the equipment shall remain with Lessor and no title or right in the equipment shall pass to Lessee except the Lease rights herein expressly granted. If requested by Lessor, plates or other markings shall be affixed to or placed on the equipment indicating that Lessor, (or assignee) is the owner thereof and Lessee will not alter, deface, cover or remove the same. Lessee, at its expense, will protect and defend Lessor's title to the equipment and will keep the equipment free and clear of any and all claims, liens, encumbrances and legal processes by Lessee's creditors and other persons. Lessor assumes no liability and makes no representation to Lessee as to the treatment of this Lease, the equipment or the rental payments for financial statement or tax purposes. The equipment shall always remain and be deemed personal property even though attached to realty. All replacement equipment, repairs, or accessories made to or placed in or upon the equipment shall become a component part thereof and title thereto shall be immediately vested in Lessor and shall be included under the terms hereof. Lessee shall not make any alterations, additions or improvements to the equipment without prior written consent of Lessor.
10. **ASSIGNMENT:** Lessor may assign this lease and the equipment and its assignee may also assign the same. All rights of Lessor hereunder shall be succeeded to by any assignee hereof and said assignee's title to this Lease, to the rental herein provided for to be paid and in and to the equipment shall be free from all defenses, setoffs or counterclaims of any kind or character which Lessee may be entitled to assert against Lessor, it being understood and agreed that any assignee of Lessor does not assume any obligations of the Lessor herein named. It is further understood and agreed, however, that Lessee may separately claim against Lessor as to any matters which Lessee may be entitled to assert against Lessor. Lessee may not, without Lessor's written consent, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest of Lessee therein.
11. **INDEMNITY:** Lessee hereby indemnifies Lessor against and holds Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of or connected with the equipment or the use thereof, including without limiting the generality of the foregoing, its manufacture, selection, delivery, possession, use, leasing, fitness, operation, return, or latent or other defects, whether or not discoverable, or arising out of any failure by Lessee to perform or comply with any of the terms and conditions of this Lease. The indemnities contained in this paragraph shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law, or otherwise. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate or use any equipment so as to incur any obligation on behalf of Lessor or impose any liability on Lessor.
12. **LOSS AND DAMAGE:** Lessee shall bear the entire risk of loss, theft, destruction or damage of the equipment or any part thereof from any cause whatsoever. No loss, theft, destruction or damage of the equipment shall relieve Lessee of the obligation to pay rent or any other obligation under this Lease. In the event of loss, theft, destruction or damage of any item or item of equipment, Lessee, at the option of Lessor, shall (a) place the same in first-class condition and repair, or (b) replace the same with like equipment in first-class condition and repair. Lessee will promptly notify Lessor in reasonable detail of any lien placed upon or asserted against the equipment, of any damage to or material change in the equipment, and of the occurrence of any other event which has had or may have a material effect on the value of the equipment.
13. **INSURANCE:** Lessee agrees to keep the equipment insured to protect all interests of Lessor, at Lessee's expense, for such risks, in such amounts, in such forms and with such companies as Lessor may require, including but not limited to fire and extended coverage insurance, explosion and collision coverage, and personal liability and property damage liability insurance. Lessor may, but shall not be obligated to, insure the equipment at the expense of Lessee. Any insurance policies relating to loss or damage to the equipment will name Lessor and Lessor's lenders as loss payees as their interests may appear and the proceeds may be applied toward the replacement or repair of the equipment or the payment of the obligations of Lessee hereunder, at the option of Lessor. Any such policies shall contain a provision that they may not be cancelled or the coverage reduced without (10) ten days prior written notice to Lessor and Lessor's lenders. Any liability insurance policies will name Lessee and Lessor as co-insured and the proceeds shall be applied first to Lessor to the extent of its liability, if any, and the balance to Lessee. Lessee shall furnish certificates, policies or endorsements to Lessor as proof of such insurance. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute or endorse all documents, checks or drafts for loss or damage or return premiums under any insurance policy issued on the equipment and hereby assigns to Lessor all of its right, title and interest in and to such insurance policies and the proceeds thereof.
14. **TAXES, MAINTENANCE, AND INSPECTION OF LEASED EQUIPMENT:** Lessee agrees to use, operate and maintain the equipment in accordance with all laws, regulations and ordinances and in accordance with the provisions of any policies of insurance covering the equipment, not to sublet the same or permit the same to be used by anyone other than Lessee or Lessee's employees, to pay all licensing or registration fees for the equipment, and to pay all taxes, assessments and governmental charges levied on or in relation to the equipment or the use thereof. Lessee agrees to keep the equipment in first-class condition and repair at its own expense, to repair and house the same in suitable shelter, and to permit Lessor and its lenders to inspect the equipment at any time and to otherwise protect their interests therein. Lessee shall use the equipment in a careful and proper manner and only for the purpose contemplated by the manufacturer. The equipment shall be used in the conduct of the lawful business of Lessee. Property taxes due for the last year of the Lease will be paid for by Lessee when the lease expires or terminates.
15. **WAIVERS:** No delay and/or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy of Lessor, or shall be construed as a waiver of any such breach of default, or of any similar breach or default thereafter occurring nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers under this Lease must be in writing and shall be effective only to the extent specifically set forth therein.
16. **COLLECTION EXPENSES, INTEREST, AND ADVANCES:** Should Lessee fail to pay any part of the rent herein reserved or any other sum required to be paid by Lessee to Lessor hereunder, Lessee shall pay Lessor interest on such delinquent payment at the highest legal contract rate from the date when such payment was due until paid, and the expenses of any collection agency or service employed by Lessor to collect said payments. In the event Lessor employs the services of any attorney to enforce any of the terms of this Lease, Lessee agrees to pay reasonable attorneys' fees and court costs so incurred by Lessor. All advances made by Lessor to preserve said property or to pay insurance premiums for insurance thereon or to discharge and pay any taxes, liens or encumbrances thereon shall be added to the unpaid balance of rentals due hereunder and shall be repayable by Lessee to Lessor together with interest thereon at the highest legal contract rate until paid.
17. **DEFAULT; REMEDIES:** It shall be a default should Lessee fail to make a payment of rent or other payment when due hereunder, or should Lessee fail to perform any other covenant herein after five (5) days' written notice to Lessee by Lessor, and in the event of such default Lessor may, at its option in addition to any other remedy given by this Lease, or by law or equity:
- Declare the entire remaining balance of rentals for the balance of the term of this Lease immediately due and payable;
 - Without demand or legal process, enter onto the premises where the equipment may be found and take possession of and remove the same, without liability to Lessee;
 - Sell, lease or otherwise dispose of the equipment, with or without notice at public or private sale;
 - Terminate this Lease
- Lessor shall be entitled to recover immediately as liquidated damages, and not as a penalty, a sum equal to the aggregate of the following:
- All unpaid rentals for the balance of the term of this Lease
 - Any expenses paid or incurred by Lessor in connection with the repossession, return, holding, repair and subsequent sale, lease or other disposition of the equipment, including attorney's fees.
 - The residual value of Lessor's interest in said equipment (which for the convenience of the parties and for the purposes of this paragraph only shall be 15% of the aggregate rent to be paid over the full term of the lease)
- less the amount, if any, received from the sale, lease or other disposition of the equipment. No right conferred by this paragraph is exclusive of any other right or remedy herein or by law or equity provided, and Lessors rights shall be cumulative and may be enforced concurrently.
18. **SURRENDER:** On or before the expiration or earlier termination of this Lease, Lessee, at its expense, shall return the equipment in first-class condition and repair, ordinary wear and tear from proper use excepted, by delivering it, packed and ready for shipment, to such place or on board such carrier as Lessor may specify. Lessee shall, upon demand by Lessor, pay to Lessor all amounts expended by Lessor to bring the equipment to first-class condition and repair, ordinary wear and tear from proper use excepted. This obligation of Lessee shall survive the expiration or earlier termination of this lease.
19. **NOTICES:** For the purpose of this Lease any notices required to be given, shall be given to the parties hereto in writing and by certified mail at the address herein set forth, or to such other addresses as each party may substitute by notice to the other, which notice shall be effective as to Lessor upon its receipt by Lessor and shall be effective as to Lessee when deposited in U. S. Mail duly addressed, postage prepaid.
20. **REMEDIES CUMULATIVE:** Lessor's rights and remedies are cumulative and may be exercised concurrently or separately. No such right or remedy is exclusive of any other right or remedy provided or permitted by this Lease or by law or in equity.
21. **UCC FILINGS:** Lessor and Lessee agree that a carbon, photographic or other reproduction of this Lease may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, including without limitation waivers of interest of owners or mortgagees of real estate upon which the equipment is located, as Lessor deems necessary or advisable for the confirmation, protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto. Lessor may file or record a financing statement with respect to this Lease or the equipment so as to give notice to any interested parties. Any such execution, delivery, filing or recording shall not be deemed factors in determining whether or not this Lease is intended as security under the Uniform Commercial Code.
22. **MISCELLANEOUS:** Time is of the essence of this Lease and each and all of its provisions. This Lease may not be modified, amended, altered or changed except by a written agreement signed by the party sought to be charged. In the event any provision hereof shall be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect. The descriptive headings hereof do not constitute a part of this Lease and no inferences shall be drawn therefrom. Whenever the context of this Lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor. If there be more than one Lessee named in this Lease, the liability of each shall be joint and several. The provisions of this Lease shall be binding upon and shall inure to the benefit of the permitted assigns, successors, heirs and personal representatives of Lessor and Lessee.
23. **STATEMENT OF PURPOSE:** Lessee hereby warrants and represents that the Equipment will be used for business purposes, and not for personal, family, household or agricultural purposes. Lessee acknowledges that Lessor has relied upon this representation in entering into this Lease.
24. **AUTHORIZATION:** Lessee represents and warrants to Lessor that Lessee has complete and unrestricted power to enter into this Lease and that the persons executing this Lease have been duly authorized to execute the same on behalf of Lessee.
25. **NO OFFSET:** This Lease is a net lease and all of Lessee's obligations under this Lease shall be paid and performed by Lessee irrespective of any setoff, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, the supplier of the equipment or any other person.
26. **NO THIRD PARTY BENEFICIARY:** Lessor and Lessee agree that this Lease is not intended to benefit any person or entity not a signatory hereto.

L. D. Jess